

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Clarke Broadcasting Corporation)	File Number: EB-01-SF-468
Licensee of Station KTIQ(AM))	NAL/Acct. No. 200232960001
Merced, California)	FRN 0003-7254-54
Facility ID # 87180)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: August 30, 2002

By the District Director, San Francisco Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Clarke Broadcasting Corporation ("Clarke"), licensee of station KTIQ,¹ Merced, California, apparently willfully violated Sections 73.1350(a) and (c), and 73.1400 of the Commission's Rules ("Rules") by failing to provide adequate transmitter control. We further find that Clarke apparently willfully and repeatedly violated 73.1560(a) and 73.1745(a) of the Rules by failing to maintain proper authorized power.² We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),³ that Clarke is apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000).

II. BACKGROUND

2. On August 24, 2001, the Federal Communication Commission ("FCC") San Francisco Office received a complaint that station KTIQ was causing interference to the reception of KXOL in Brigham City, Utah, by apparently operating with daytime power after sunset. Station KTIQ is authorized to operate on frequency 1660 kHz with a nominal daytime power of 10.0 kW and a nominal nighttime power of 1.0 kW, using a non-directional antenna during both modes.⁴ According to the terms of the

¹ The station's call sign at the time of inspection was KAXW. The call sign change to KTIQ was authorized on February 12, 2002. For ease of reference, the current call sign is used throughout this NAL.

² 47 C.F.R. §§ 73.1350(a) and (c), 73.1400, 73.1560(a), and 73.1745(a).

³ 47 U.S.C. § 503(b).

⁴ Clarke Broadcasting Corporation, Station KAXW (currently KTIQ) License File Number BL-20010629ACM, granted September 19, 2001.

license, the average hour of sunset for November, after which KTIQ was required to operate pursuant to its nighttime authority, was 4:45 p.m. Pacific Standard Time (non-advanced) ("PST").

3. On eight different days in the month of November in 2001, Agents from the San Francisco Office monitored the on-air signal of KTIQ from approximately 4:30 p.m. to 5:00 p.m. The Agents determined that on all eight days of monitoring the station's antenna-input power was not lowered at the average local sunset time (4:45 PM). And, more specifically, on four of the days, November 13, 22, 23, and 29, 2001, the field intensity level had not decreased at all by 5:00 p.m. when monitoring ended.

4. On December 4, 2001, San Francisco Office Agents inspected station KTIQ's transmitter site near Bert Crane Road, Atwater, California and studio at 514 E. Bellevue Road, Atwater, California. The inspection revealed that the station was being operated manually and that during certain weekend and holiday periods the station had been operated unattended. The station log indicated that station personnel did not reduce the antenna-input power at the specified sunset time on numerous occasions during the month of November, and that the power had not been reduced at all during four consecutive days when all station personnel were on leave.

5. The inspection also revealed that the station's remote control system was not programmed to alert the operator of any out of tolerance condition. The remote control system was also not calibrated accurately, resulting in antenna-input power of less than 90% of authorized power. The station's carrier frequency exceeded the authorized frequency by twenty-two Hertz. The station log showed that the chief operator had reviewed the log, but failed to initiate steps to determine the cause of the out of tolerance conditions and to maintain the antenna-input power within its limits.

6. On February 13, 2002, the San Francisco Office issued a Notice of Violation ("NOV") to Clarke for the violations detected during the on-air monitoring in November and the December 4, 2001 inspection. The NOV included violations for, among others, failure to switch to and operate in nighttime mode at sunset, failure to establish monitoring procedures and schedules to determine compliance with the operating power requirements (the remote control system had not been programmed to alert operators of out of tolerance conditions), failure to calibrate the remote meter (the remote control reading for antenna-input power was 17.1% low), failure to maintain the carrier frequency within the authorized tolerance of 20 Hz (the operating frequency was measured 22 Hz high), failure to maintain antenna-input power within authorized tolerance (the antenna-input power was found to be 87.3% of authorized power), and failure of the chief operator to maintain supervisory oversight of the station operation.

7. On March 6, 2002, Clarke submitted a reply to the NOV. Clarke stated that the station had been reconfigured so that the switch to and from nighttime power is now accomplished automatically rather than manually, had programmed the remote control system to alert the station's Chief Engineer at his cellular telephone and pager of out-of- tolerance conditions at the station, had calibrated the remote control systems meter to indicate true operating power, and a consulting engineer had adjusted the carrier frequency to within tolerance. The response indicated that the chief operator had been replaced and the new chief operator was performing frequent inspection of the automated system to insure proper operation.

III. DISCUSSION

8. Section 503(b) of the Act provides that any person who willfully and repeatedly fails to comply substantially with the terms and conditions of any license, or willfully and repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly and the term "repeated" means the commission or omission of such act more than once or for more than one day.⁵

9. A broadcast station licensee is responsible for maintaining and operating the station in compliance with the technical rules and in accordance with the terms of the station license. Licensees must not exceed operating power limits or operate in daytime mode beyond local sunset time. In particular, Section 73.1745(a) states in part that, "[n]o broadcast station shall operate at times, or with modes or power, other than those specified and made part of the license...." and Section 73.1560(a)(1) and (2) of the Rules states in part that, "the antenna-input power of an AM station as determined by the procedures specified in § 73.51 must be maintained as near as is practicable to the authorized antenna-input power and may not be less than 90% or more than 105% of the authorized power.... Whenever the transmitter of an AM station cannot be placed into the specified operating mode at the time required, transmissions must be immediately terminated...." On November 6, 7, 13, 21, 22, 23, 28, and 29, 2001, KTIQ exceeded power limits by operating with daytime power (10 kW) after the specified local sunset time. On November 13, 22, 23, and 29, 2001, the station operated at least 15 minutes beyond sunset time based on FCC observations. During the period November 22-25, 2001, the station was operated unattended because all station personnel were on leave during the holiday period, and the operating modes were not being changed during this period because the station was configured for manual mode changes.

10. Licensees must maintain adequate control of the station transmitter. Section 73.1350(a) of the Rules states in part that, "[e]ach licensee is responsible for maintaining and operating its broadcast station in a manner which complies with the technical rules...and...with the terms of the station authorization." Section 73.1350(c)(1) and (2) of the Rules states in part that, "[t]he licensee must establish monitoring procedures and schedules for the station.... Monitoring procedures and schedules must enable the licensee to determine compliance with § 73.1560 regarding operating power and AM station mode of operation..." Section 73.1400 states in part that, "[t]he licensee of an AM...station is responsible for assuring that at all times the station operates within tolerances specified by applicable technical rules contained in this paragraph and in accordance with the terms of the station authorization..." In general, this section permits any method or level of transmission system monitoring and supervision that precludes out-of-tolerance operation. KTIQ's remote control system had not been programmed to alert the operator of out of tolerance conditions, the remote control system was not calibrated to provide accurate indications of antenna-input power, the station's carrier frequency was beyond authorized tolerance, and the chief operator had failed to initiate steps to correct out-of-tolerance conditions noted in the station log on at least ten occasions in November 2001.

⁵ 47 U.S.C. § 503(b). Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991). Section 312(f)(2), which also applies to Section 503(b), provides: "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

11. Based on the evidence before us, we find that Clarke willfully violated Sections 73.1350(a) and (c), and 73.1400 of the Commission's Rules by failing to maintain and operate station KTIQ in a manner which complied with the technical rules and the station license terms, and failing to establish monitoring procedures to insure compliance with the authorized operating power and AM mode of operation. In addition, we find Clarke willfully and repeatedly violated Sections 73.1560(a) and 73.1745(a) of the Commission's Rules by failing to maintain proper operating power and mode of operation.

12. The base forfeiture amount set by *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"),⁶ for exceeding power limits is \$4,000 and for failure to provide adequate transmitter control is \$3,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,⁷ which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case, a \$7,000 forfeiture is warranted.

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, CLARKE BROADCASTING CORPORATION, is hereby NOTIFIED of an APPARENT LIABILITY FOR A FORFEITURE in the amount of seven thousand dollars (\$7,000) for violations of Sections 73.1350(a) and (c), 73.1400, 73.1560(a) and 73.1745(a) of the Rules.⁸

14. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this NOTICE OF APPARENT LIABILITY Clarke Broadcasting Corporation SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

15. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment MUST INCLUDE the FCC Registration number (FRN) referenced above and also must note the NAL/Acct. No. referenced in the caption.

16. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and must include the NAL/Acct. No. referenced in the caption.

⁶ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80, 73.1350(a) and (c), 73.1400, 73.1560(a), and 73.1745(a).

17. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

18. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

19. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail # 7099 3220 0002 6510 8219, Return Receipt Requested, to Clarke Broadcasting Corporation, 1175 Fairview Drive, Suite N, Carson City, NV 89701.

FEDERAL COMMUNICATIONS COMMISSION

Thomas N. Van Stavern
District Director, San Francisco Office

⁹ See 47 C.F.R. § 1.1914.